

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Scholz Design, Inc., : ECF CASE

Plaintiff, : MOTION TO WITHDRAW AS COUNSEL
vs. : AND REQUEST FOR AN EXTENSION TO
Kevin Maher, et al., : ANSWER PLAINTIFF'S DISCOVERY REQUESTS

Defendants. :
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Abelman Frayne Schwab, Defendant Kevin Maher's attorneys, hereby moves this Court for an Order withdrawing Abelman Frayne & Schwab as attorneys of record for Defendant Kevin Maher and for an Order extending Defendant Maher's time to answer Plaintiff's discovery requests based on the accompanying Declaration of Ned W. Branthover dated August 20, 2008.

Date: August 20, 2008
New York, New York

Respectfully submitted,



Ned W. Branthover
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue – 10th Floor
New York, NY 10017
Telephone: (212) 949-9022
Fax: (212) 949-9190
E-MAIL: nwbranthover@lawabel.com
Attorney for Defendant Kevin Maher

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system on this 20 day of August, 2008 which will send notification of such filing to the following:

Frank J. Ciano, Esq.
Michael D. Shalhoub, Esq.
Goldberg Segalla LLP
170 Hamilton Avenue, Ste. 203
White Plains, NY 10601

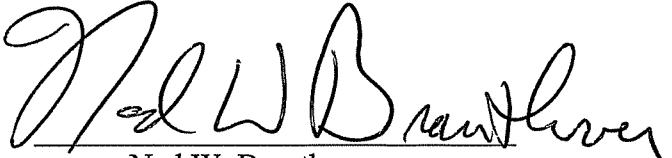
Attorneys for Plaintiff Scholz Designs, Inc.

Stephen Paul Mandracchia, Esq.
Hudson Technologies Company
P.O. Box 1541, One Blue Hill Plaza
Pearl River, NY 10965

Attorney for Defendants Blanchard Gate, LLC and
MBC Contractors c/o Patrick J. Magee

Eric Knute Osborn
Carl E. Person, Esq., an Individual Practitioner
325 W. 45th Street, Ste. 201
New York, NY 10036

Attorney for Defendant Eric Knute Osborn



Ned W. Branthover

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
Scholz Design, Inc., : ECF CASE

Plaintiff, : **DECLARATION OF NED W. BRANTHOVER**

vs. : 07 CIV 11045 (WCC)

Kevin Maher, et al., :

Defendants. :
----- X

Ned W. Branthover declares:

1. I am an attorney with the law firm of Abelman, Frayne & Schwab, attorneys for Defendant Kevin Maher (“Mr. Maher”) in the above-captioned action, and I submit this Declaration in support of Abelman Frayne & Schwab’s motion to withdraw as counsel and for a 60-day extension for Defendant Kevin Maher to answer Plaintiff’s discovery requests. I am over 18 years of age and I make this Declaration based on my own personal knowledge and, if called upon to testify, could and would testify competently to the matters described herein.
2. The reason for this withdrawal is that Mr. Maher has not and cannot pay his attorneys fees.
3. Maher owes my law firm \$2,973.15 and has represented that he is unable to pay this outstanding amount and cannot pay his legal fees going forward.
4. Mr. Maher has consented to this motion.
5. The status of this action is that Plaintiff Scholz Design, Inc. served the following discovery requests on July 9, 2008:

- Plaintiff's first set of interrogatories;
- Plaintiff's first set of requests for admission; and
- Plaintiff's first set of requests for production of documents to Defendant

Kevin Maher.

6. On behalf of Mr. Maher I requested Plaintiff's counsel that Mr. Maher be granted a 30-day extension to respond to these outstanding discovery requests while he obtains new counsel.

7. Defendant Maher's attorneys request for an extension from Plaintiff's counsel was granted but then changed to include the condition of no further extensions. A copy of an email from Plaintiff's counsel concerning this condition is attached herewith as Exhibit A.

8. Mr. Maher could not agree to the no further extensions condition in view of his need to retain new counsel; therefore, Mr. Maher is making this motion for a 60 day extension.

9. This is Mr. Maher's first request for an extension and Mr. Maher is not aware of any prejudice to Plaintiff should this request be granted.

10. WHEREFORE, Abelman Frayne & Schwab requests that it be withdrawn as counsel and that Mr. Maher be given opportunity to proceed pro se or be given additional time to identify and retain new counsel.

11. Abelman Frayne & Schwab also requests that the Court grant an extension of 60 (sixty) days for Mr. Maher to answer Plaintiff's outstanding discovery requests, making October 9, 2008 the new date to respond.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
August 20, 2008



NED W. BRANTHOVER

EXHIBIT A

Ngai, Ann

From: BRANTHOVER, N.
Sent: Wednesday, August 20, 2008 11:20 AM
To: Ngai, Ann
Subject: FW: Scholz Design/13974.0001

From: Shaun J. Pilcher [mailto:spilcher@goldbergsegalla.com]
Sent: Tuesday, August 19, 2008 3:11 PM

To: BRANTHOVER, N.
Cc: Robert Varga
Subject: RE: Scholz Design/13974.0001

Dear Ned,

Since you have not yet filed your motion to be relieved as counsel, you are in fact still Maher's counsel of record. Accordingly, you should contact your client and get his approval to accept the stipulation. Should you fail to execute the stipulation, we will deem the discovery responses of Mr. Maher to be late and that he will have waived any and all objections. His responses will be deemed due within five (5) days of the date of this correspondence. Failure to respond within the five days will result in an application to the court for a pre-motion conference and thereafter a motion to strike Mr. Maher's answer.

You may, of course, make an application to the court to extend the date upon which the responses are due, but it will be without the consent of the plaintiff and will be opposed to the extent there is no language limiting him to this one extension.

Our client does not wish to allow Mr. Maher to drag this litigation out unnecessarily as he has done to this point.

Should you have any questions or require any further information, please do not hesitate to contact me.

Best regards,

Shaun J. Pilcher
Paralegal to Robert Varga



Shaun J. Pilcher
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reply to the sender and delete the message from your email
system. Thank you.*

Privileged Attorney-Client Communication / Attorney's Work Product

From: BRANTHOVER, N. [mailto:nwbranthover@lawabel.com]
Sent: Monday, August 18, 2008 11:16 AM
To: Shaun J. Pilcher
Subject: RE: Scholz Design/13974.0001

I have not submitted the motion because I am waiting for a stip from my client which I was suppose to receive last week.
Please advise your client and get back to me.
Regards, Ned

From: Shaun J. Pilcher [mailto:spilcher@goldbergsegalla.com]
Sent: Monday, August 18, 2008 11:14 AM
To: BRANTHOVER, N.
Cc: Robert Varga
Subject: RE: Scholz Design/13974.0001

Dear Ned,

This language was placed in the stipulation by order of our client. I do not believe he will agree to take that language out.
However, I will certainly inquire.
Has your motion to be relieved as counsel been granted already? I have not received a copy of the order. Please advise.

Regards,

Shaun J. Pilcher
Paralegal to Robert Varga, Esq.

From: BRANTHOVER, N. [mailto:nwbranthover@lawabel.com]
Sent: Monday, August 18, 2008 10:59 AM
To: Shaun J. Pilcher
Subject: FW: Scholz Design/13974.0001

Dear Shaun,

I noticed that you included in the stip an agreement not to seek further extensions. This was not mentioned before nor can I agree to this since I am no longer representing Maher. Can you agree to revise the stip and delete this language?
Regards, Ned Branthover

From: Shaun J. Pilcher [mailto:spilcher@goldbergsegalla.com]
Sent: Wednesday, August 13, 2008 12:09 PM
To: BRANTHOVER, N.
Cc: Frank J. Ciano; Robert Varga; James L. Rogers
Subject: Scholz Design/13974.0001

Dear Mr. Branthover:

Attached hereto please find a duly executed Stipulation granting defendant Kevin Maher up to and including September 9, 2008 to respond to plaintiff's First Set of RFPD, First Set of Interrogatories, and First Set of Requests to Admit. Please note that we made one change to the stipulation to include language that no further extensions will be granted in regards to these discovery demands. If this modification is acceptable to you and your client, please execute and file the Stipulation with the Court in compliance with the Court's rules regarding same.

As always, should you have any questions, comments, or concerns, please do not hesitate to contact the undersigned

Best regards,

Shaun J. Pilcher
Paralegal to Robert Varga, Esq.

[redacted]
[redacted]

Shaun J. Pilcher
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White Plains, NY 10601
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